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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 710

GEORGE D. TEMPLETON, ON BEHALF OF GEORGE DOUGLAS TEMPLETON, JR.,

Appellant,

vs.

STATE OF CALIFORNIA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS.

EARL WARREN,
Attorney General of California;
DAVID K. LENER,
Deputy Attorney General of California,
Counsel for Appellee.

INDEX.

Subject Index.

	Page
Motion to dismiss appeal	1
Statement opposing jurisdiction and in support of motion to dismiss	3
Facts	3
Issues	4
Appendix—Applicable sections of California Penal Code	17

Table of Cases Cited.

Bennett v. *State*, 14 N. W. 912	15
Frank v. *Mangum*, 237 U. S. 309	11
Howard v. *Kentucky*, 200 U. S. 164	10
People v. *Cordova*, 14 Cal. App. (2nd) 308	6
People v. *D'Angelo*, 13 Cal. App. (2nd) 203	6
People v. *French*, 13 Cal. (2d) 720	6
People v. *Hickman*, 204 Cal. 470	6, 12
People v. *Leong Fook*, 206 Cal. 64	6
People v. *Troche*, 206 Cal. 35	6
Troche v. *California*, 280 U. S. 524	6, 7
Walker v. *New Mexico and S. P. R. R. Co.*, 165 U. S. 593	11

Statutes Cited.

Constitution of the United States:	
Sixth Amendment	4
Fourteenth Amendment	4, 11
Penal Code of California:	
Section 1016	3, 4, 11
Section 1020	3, 4, 11
Section 1026	3, 4, 12

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 710

IN THE MATTER OF GEORGE D. TEMPLETON ON BEHALF OF GEORGE D. TEMPLETON, JR., FOR A WRIT OF HABEAS CORPUS.

Motion to Dismiss Appeal.

Now Comes appellee and moves the above entitled Court to dismiss the appeal taken by appellant herein, upon the ground that said appeal does not present a substantial Federal question to this Court.

Dated at San Francisco, September 29, 1941.

EARL WARREN,
Attorney General of the State of California;
DAVID K. LENER,
Deputy Attorney General,
Attorneys for Appellee.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 710

IN THE MATTER OF GEORGE D. TEMPLETON ON BEHALF OF GEORGE D. TEMPLETON, JR., FOR A WRIT OF HABEAS CORPUS.

STATEMENT OF APPELLEE AGAINST JURISDICTION, IN SUPPORT OF MOTION TO DISMISS APPEAL.

Facts.

This appeal is taken from an order of the Supreme Court of the State of California entered the 14th day of August, 1941, denying appellant's petition for a writ of *habeas corpus*.

From the statement of appellant in support of this Court's jurisdiction, it appears that at or about the 8th day of August, 1932, he was charged in an information by the District Attorney of Santa Clara County, State of California, with murder committed with premeditation and malice aforethought; that upon his arraignment he entered a plea of "not guilty" and a plea of "not guilty by reason of insanity" under and pursuant to sections 1016, 1020 and 1026 of the Penal Code of the State of California (California Statutes 1927, pages 1148 and 1149); that upon the trial of appellant under his plea of not guilty to the infor-

mation, he sought to introduce in the evidence proof of his insanity at the time of the commission of the offense of which he was charged, but that the trial court, by force of said Penal Code sections, excluded said evidence from the record.

It further appears from the petition of appellant filed in the Supreme Court of the State of California for said writ of *habeas corpus* that in the trial of appellant under his plea of not guilty, the jury returned a verdict of guilty with recommendation of life imprisonment; that thereupon appellant went to trial under his plea of not guilty by reason of insanity and that the jury returned a verdict finding the appellant sane at the time of the commission of the crime; and that on the 2nd day of November, 1932 judgment was entered by the trial court, sentencing the appellant to life imprisonment in the State Prison at San Quentin, California.

The time for an appeal from the judgment of the trial court having long since elapsed, appellant filed the petition for writ of *habeas corpus* under consideration in the State Supreme Court.

Issues.

Appellant contends that the sections of the Penal Code, to wit, 1016, 1020 and 1026, under which he was obliged to be tried, offend the Sixth and Fourteenth Amendments to the Constitution of the United States for the following reasons:

(a) That they prescribe a procedure that denies to petitioner a fair trial by an impartial jury;

(b) That they deny to petitioner a trial by due process of law;

(c) That they deny to petitioner the equal protection of the laws.

In support of these contentions appellant argues there must exist in every crime the union or joint operation of two elements, namely, the intent and the act; that a person while insane cannot form a criminal intent; that the defense of insanity is included within the plea of not guilty, and that the refusal of the court to admit evidence of his insanity under said plea deprives him of his right to prove the absence of criminal intent.

When the argument of appellant is subjected to analysis, it reduces itself to the proposition that the Penal Code sections under consideration are incompatible with the Federal Constitution, not upon the ground that appellant was not given an opportunity to prove his insanity at the time of the commission of the offense under the so-called "right and wrong" test which has always been the law of this State, but on the ground of the refusal of the trial court to admit any evidence of partial insanity under such plea which would fall far short of that required to meet said test for the purpose of proving circumstances in mitigation of the offense charged. In other words, appellant demands a right to introduce in the evidence circumstances which are immaterial and irrelevant and in no way touch upon his guilt or innocence, and the exclusion of which deprives him of no right he had hitherto under a jury trial or which existed in common law. The departure from the old system of procedure introduced by these Penal Code sections is in form and not in substance, in procedure alone. It removed confusion which hitherto frequently resulted in obvious abuses and the resultant defeat of justice. For the convenience of the court, the Penal Code sections under consideration are set forth in the Appendix hereto.

This brings us to a consideration of the question as to whether the appeal presents a substantial Federal question in order to give this Court jurisdiction.

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BY THE APPEAL OR THE STATEMENT OF APPELLANT AS TO JURISDICTION, HENCE THIS COURT HAS NO JURISDICTION TO REVIEW THE DECISION OF THE STATE SUPREME COURT.

(a) *The Penal Code Sections under Consideration and the Issues Raised by Appellant Herein Have Already Been Held by this Court Not to Present a Substantial Federal Question.*

At the outset it may be said that these Penal Code sections have been repeatedly assailed as denying due process of law and the equal protection of the law guaranteed by the Constitution of the United States and in each instance their constitutionality has been upheld by the court of last resort and the District Court of Appeal of this State in able and exhaustive opinions and in one instance by this Court, the only instance in which this Court was called upon to decide whether a substantial Federal question was presented as to the constitutionality of said Penal Code sections.

People v. *Hickman,* 204 Cal. 470;
People v. *Troche,* 206 Cal. 35;
People v. *Leong Fook,* 206 Cal. 64;
People v. *French,* 12 Cal. (2d) 720;
People v. *Cordova,* 14 Cal. App. (2d) 308, 310;
People v. *D'Angelo,* 13 Cal. App. (2d) 203, 208;
Troche v. *California,* 280 U. S. 524.

In *People* v. *Troche, supra,* one of the leading cases upon the subject, the identical Penal Code sections were assailed and the same alleged constitutional issues presented. In holding said Penal Code sections constitutional, the State Supreme Court at page 42 said:

"We are also satisfied that the present statutes in no way violate the 'due process' provisions of either

the federal or the state constitutions. The words 'due process of law' merely mean law in its regular course of administration, according to prescribed forms and in accordance with the general rules for the protection of individual rights. (*Kalloch* v. *Superior Court*, 56 Cal. 229, 240.) Due process of law is not limited to the due process of the settled usages of the past, but may include new methods of procedure unknown to the common law, provided they are in harmony with the accepted underlying principles of such procedure according to the traditions of the common law. They must be orderly and provide for reasonable notice and opportunity to be heard. (*Hurtado* v. *California*, 110 U. S. 516 (28 L. Ed. 232, 4 Sup. Ct. Rep. 111); *Twining* v. *New Jersey*, 211 U. S. 78 (53 L. Ed. 97; 29 Sup. Ct. Rep. 14, see, also, Rose's U. S. Notes).) Mr. Cooley, in his work on Constitutional Law, says (p. 224): 'When life and liberty are in question there must, in every instance, be judicial proceedings; and that requirement implies an accusation, a hearing before an impartial tribunal with proper jurisdiction, and a conviction and judgment, before the punishment can be inflicted. But the states will prescribe their own mode of proceeding and trial.' (See, also, *People* v. *Hickman*, supra.)"

In *People* v. *Troche, supra,* an appeal was taken from the Supreme Court of the State of California to this Court in *Troche* v. *California,* 280 U. S. 524. In dismissing said appeal for the want of the presentation of a substantial Federal question, this Court said:

"No. 247. *Troche* v. *California.* Appeal from the Supreme Court of California. Argued December 2, 1929. Decided December 9, 1929. Per Curiam: The Appeal is dismissed for the want of a substantial Federal question, on the authority of *Shulthis* v. *McDougal,* 225 U. S. 561, 569; *Hull* v. *Burr,* 234 U. S. 712, 720; *Norton* v. *Whiteside,* 239 U. S. 144, 147. Treating the papers whereon the appeal was allowed as a petition for certiorari, as required by sec. 237 (c) of the Ju-

dicial Code, as amended by the act of February 13, 1925 (c. 229, 43 Stat. 936, 938), the certiorari is denied."

Since the issues presented by appellant have already been held not to present a substantial Federal question necessary to give this Court jurisdiction, it seems idle and a waste of time to pursue the subject further. At this risk, however, we will for the convenience of the Court draw attention to certain of the observations made by the decisions of the Supreme Court of the State of California, buttressed by references to the decisions of this Court, plainly showing that the contentions of appellant are entirely without merit.

(b) *The Criminal Procedure Adopted by a State is a Matter of its Own Concern so Long as it Does Not Deny Fundamental Rights Guaranteed by the Federal Constitution.*

In *People* v. *Hickman, supra,* the defendant was indicted for murder. He confessed its commission and entered the sole plea of not guilty by reason of insanity, under the provisions of the Penal Code here in dispute. He contended that in being obliged to follow the procedure outlined in said Penal Code sections, he was deprived of his constitutional right to a jury trial. On pages 478 and 479 of said case the Supreme Court of California said:

"Appellant further contends that the law under which he was tried violates the provisions of section one of the fourteenth amendment to the constitution of the United States (the 'due process' and 'equal protection' clause) relating to the powers of the several states. No federal question is here involved. A state has full control over the procedure in its courts, both in civil and criminal cases, subject only to the qualification that such procedure must not work a denial of

fundamental rights or conflict with specific and applicable provisions of the federal constitution. It is not tied down by any provision of the federal constitution to the practice and procedure which existed at common law. Subject to the limitations noted, it may avail itself of the wisdom gathered by experience to make such changes as may be necessary. (*Brown* v. *New Jersey*, 175 U. S. 172, 175 (44 L. Ed. 119, 20 Sup. Ct. Rep. 77; see, also Rose's U. S. Notes).) There is nothing in the fourteenth amendment to prevent a state from adopting a reasonable regulation of procedure in relation to jury trials. (*Frank* v. *Mangum*, supra.) As used therein the term 'due process' refers to the law of the land which derives its authority from the inherent and reserved powers of the states, exercised within the limitations of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, the greatest security of which resides in the right of the people to make their own laws and alter them at pleasure. It does not follow that merely because something has been the actual law of the land from time out of mind, it is therefore 'due process.' (*Hurtado* v. *California*, 110 U. S. 516, 529 (28 L. Ed. 232, 4 Sup. Ct. Rep. 111).) The common law is only one of the forms of law and is no more sacred than any other. As a rule of conduct, it may be changed at the will of the legislature, unless prevented by constitutional limitations. The great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances. (*Munn* v. *Illinois*, 94 U. S. 113, 134 (24 L. Ed. 77).)"

Said Court continues, on pages 479 and 480:

"The fact that the new law and procedure of the state of California may appear to mark a departure from the law and procedure relating to the same subject in other states has no place in this consideration. The 'equal protection' provision of the federal constitution does not secure to all persons in the United States the bene-

fit of the same laws and the same remedies. Great diversities in these respects may exist in states separated only by imaginary lines. On one side of the line there may be a right to trial by jury, and on the other side, under like circumstances, there may be no such right. (*Missouri* v. *Lewis*, 101 U. S. 22, 31 (25 L. Ed. 989).) A state may make different procedure for trials of even the same class of offenses. The fourteenth amendment merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed. (*Hayes* v. *Missouri*, 120 U. S. 68 (30 L. Ed. 578, 7 Sup. Ct. Rep. 350); *Brown* v. *New Jersey*, supra, p. 177.)"

With reference to the due process clause of the Fourteenth Amendment, as applied to state criminal procedure, the Court, in *Howard* v. *Kentucky*, 200 U. S. 164, at page 166, said:

"It must not be so construed, however, as to interfere with the State in its enactment and local administration of the criminal law, nor to confine it to any special mode of proceeding, so long as said law, as enforced by the State, affords equal protection to all persons within its jurisdiction, similarly situated, and is not violative of the fundamental and inalienable rights that are essential to the protection of life, liberty and property. Section 11, Bill of Rights, Kentucky; Davidson *v.* New Orleans, 96 U.S. 99; Fifth Amendment Const. U.S.; Holden *v.* Hardy, 169 U.S. 366; Lowe *v.* Kansas, 163 U.S. 85; Civil Rights Cases, 109 U.S. 11; United States *v.* Cruikshank et al., 92 U.S. 554; United States *v.* Harris, 106 U.S. 629; Caldwell *v.* Texas, 137 U.S. 699; Allen *v.* Georgia, 166 U.S. 137; Brown *v.* New Jersey, 175 U.S. 174; Maxwell *v.* Dow, 176 U.S. 582; Hurtado *v.* California, 110 U.S. 516; Thompson *v.* Utah, 170 U.S. 344; Ex parte Ulrich, 42 Fed. Rep. 591."

Again, in *People* v. *Troche, supra,* at page 42, the Court, citing *Walker* v. *New Mexico and S.P.R.R. Co.,* 165 U.S. 593, 596, said:

> "* * * So long as the substance of the right to trial by jury, as guaranteed by the constitution, is preserved, the procedure by which this result is reached is wholly within the discretion of the legislature, and the courts may not set aside any legislation in this respect because the form of action—the mere manner in which the questions are submitted—is different from that which obtained at the common law. (Walker *v.* New Mexico & S.P.R.R. Co., 165 U.S. 593, 596 (41 L. Ed., 837, 841, 17 Sup. Ct. Rep. 421, 422, see, also, Rose's U.S. Notes).)"

It was said in *Frank* v. *Mangum,* 237 U.S. 309, at page 339 and 340:

> "There is nothing in the Fourteenth Amendment to prevent a State from adopting and enforcing so reasonable a regulation of procedure."

(c) *Sections 1016, 1020 and 1026 of the Penal Code of the State of California do not encroach upon due process of law or the equal protection of the laws guaranteed by the Constitution of the United States.*

Under section 1016 of the Penal Code it is substantially provided the defendant may plead not guilty or not guilty by reason of insanity, or both; if he pleads "not guilty" and does not plead "not guilty by reason of insanity" he is conclusively presumed to be sane; if he pleads only "not guilty by reason of insanity" he admits the commission of the offense charged, it is a plea of confession and avoidance; while section 1020 of the Penal Code simply provides that all matters of fact tending to prove a defense may be put in the evidence under a plea of not guilty, save insanity, a former judgment or conviction and once in jeopardy,

which are the subject of special pleas. Section 1026 provides in substance that where the accused pleads both "not guilty" and "not guilty by reason of insanity", he shall first be tried under the plea of "not guilty" and if convicted will be immediately tried under the plea of "not guilty by reason of insanity". It thus appears that the defendant is deprived of no substantial constitutional right under a jury trial; that there is no substantial departure from the jury trial at common law; that he still has the right to show that he was mentally incapable of committing the offense charged. As indicated in *People* v. *Hickman, supra,* at page 477:

> "* * * The purpose of the statute is to overcome some of the abuses which have crept into the administration of justice by reason of the frequent interposition of the defense of insanity in criminal prosecutions. Its provisions are plain, and we deem it unnecessary to enter into a critical analysis or restatement of its various features to show that every essential right of one charged with crime by indictment or information has been safeguarded, and that a defendant, by availing himself of its various provisions, and entering the proper plea or pleas, may interpose and submit to the consideration of the jury every issue and every defense that has heretofore been open to him. Under proper pleas he may still submit all the evidence he could submit before the effective date of the amended statute. * * *"

On page 478 the Court continues:

> "* * * The present statute does not take away the defense of insanity, and the procedure followed in no way changed or affected the rule respecting the burden which rested on the prosecution and on the defense in this case."

Appellant, however, insists, as previously indicated, that he has a constitutional right under the plea of not guilty

to introduce evidence of a degree less than that required to satisfy the "right and wrong test"; in other words, that notwithstanding the accused could distinguish right from wrong, he had the right to introduce sanity of a lesser degree, such as partial insanity, in mitigation of the offense. That the sole test applied in the State of California is the so-called "right and wrong test", generally adopted by the States of the Union, as laid down in the celebrated *McNaughton* case, and that evidence of partial insanity which falls short of the requirements of the test is immaterial and irrelevant and may not be used for any purpose, is clearly announced in *People* v. *Troche, supra.* On pages 46 and 47 the Court said:

> "* * * In this state, in order that 'insanity may be available as a defense to a crime charged, it must appear that the defendant, when the act was committed, was so deranged and diseased mentally that he was not conscious of the wrongful nature of the act committed. If he has reasoning capacity sufficient to distinguish between right and wrong, as to the particular act he is doing, knowledge and consciousness that what he is doing is wrong and criminal and will subject him to punishment, he must be held responsible for his conduct. Although he may be laboring under partial insanity, as, for instance, suffering from some insane delusion or hallucination—still, if he understands the nature and character of his action and the consequences—if he has knowledge that it is wrong and criminal, and that if he does the act he will do wrong, such partial insanity or the existence of such delusion or hallucination is not sufficient to relieve him from responsibility for his criminal acts.' (People *v.* Willard, 150 Cal. 543, 554 (89 Pac. 124, 129); People *v.* Kerrigan, 73 Cal. 222, 225 (14 Pac. 849). See, also, People *v.* Hurtado, 63 Cal. 288). In this state 'so far as accountability to the law is concerned, there is no middle ground.' (People *v.* Perry, 195 Cal. 623, 639 (234 Pac. 890, 896).) Such is the law in many juris-

dictions. (Warner *v.* State, 114 Ind. 137 (16 N. E. 189); United States *v.* Lee, 4 Mackey (D. C.), 489 (54 Am. Rep. 293); Commonwealth *v.* Wireback, 190 Pa. St. 138 (70 Am. St. Rep. 625, 42 Atl. 542); Dean *v.* State, 105 Ala. 21 (17 South. 28); Wartena *v.* State, 105 Ind. 445 (5 N. E. 20); Kirby *v.* State, 68 Tex. Cr. Rep. 63 (150 S. W. 455).) 'Protection is always afforded in courts of law to persons of unsound mind. Distinction is made between sanity and insanity in people, but not as respects their grade of intelligence. The law does not attempt to measure degrees of intellect, nor to make distinction with respect thereto, where the power of thought and reason exists.' (State *v.* Schlaps, 78 Mont. 560, 578 (254 Pac. 858, 863).) In 14 R. C. L., page 599, section 54, it is said: 'It is the general rule that insanity, when interposed as a defense in a criminal prosecution, is either a complete defense or none at all, and it has been held that there is no degree of insanity sufficient to acquit of murder but not of manslaughter.' A valuable note on this subject is found in the case of Knights *v.* State, 76 Am. St. Rep. 83 (58 Neb. 225 (78 N. W. 508).)

"It follows, therefore, that any evidence tending to establish the insanity of the defendant under his plea of not guilty by reason of insanity at the time of the commission of the homicide, other than evidence of the immediate circumstances of the offense, would have been irrelevant and immaterial on the trial of the general issue as to the guilt or innocence of the defendant raised by the general plea of not guilty. As the statute accorded the defendant his full right, and ample opportunity to submit to a jury his plea of insanity at the time of the commission of the offense, in excuse of his act and as reason why no penalty of the law should be visited upon him, it follows that the trial court correctly excluded the evidence on the trial of the general issue."

See, also,

People v. *Leong Fook, supra,* pages 71, 72;
People v. *French, supra,* page 737.

In *People* v. *French, supra,* at pages 729 and 730 it was said:

> "It is one of the contentions of counsel that the defendant at the time he committed the homicide was in a 'muddled and deranged condition of mind and the emotions controlled his actions, and that he acted self-conscious only of a moral justification of his act.' The obvious fallacy of the proposition is that it would not have constituted a defense to a charge of murder under the law of this state even if the suggested psychological phenomena had in fact existed. It was necessary to go further. The burden was upon the defendant to prove by a preponderance of the evidence that he was insane in the sense that he was unable to appreciate the nature and the quality of his act and did not know it was wrong to commit it. * * *"
>
> "Moreover, it has long been the settled law of this state that neither emotional, moral nor partial insanity nor insane delusion nor hallucination, nor the irresistible impulse theory (the accused being conscious as to the nature and quality of his act and that it was wrongful and punishable by law), affords grounds in this state as the basis of a defense or as an excuse for the commission of a homicide. * * *" (Citing numerous authorities.)

Again, a person charged with crime is presumed to be sane until the contrary is established by a preponderance of the evidence.

People v. *Hickman, supra,* page 427.

And finally, quoting from *Bennett* v. *State* (Wis.), 14 N. W. 912, the court, in *People* v. *Troche, supra,* at page 45, said:

> "* * * The court said: 'All the issues would still be tried by a jury in the same way they are now tried. * * * It is clear, if the legislature have the power to compel the defendant to plead insanity as a defense, or waive it, then it has power to prescribe the manner of disposing of that issue on the trial so long as it

leaves the accused a trial by jury upon such issue.' (See, also Hempton *v.* State, 111 Wis. 127 (86 N. W. 596); Oborn *v.* State, 143 Wis. 249 (31 L. R. A. (N. S.) 966, 126 N. W. 737).)"

From the foregoing it appears obvious that the appellant was not entitled to introduce any evidence of partial insanity or insanity short of general insanity, in mitigation of the offense; that there is no half-way ground—he must prove such insanity which under the laws of this State constitute an entire excuse to its perpetration. Anything less does not mitigate. This has always been the law of this State and under the Penal Code sections in dispute he has that privilege. He has substantially all the privileges and rights he was entitled to before the adoption of the departure in procedure as evidenced by said Penal Code sections.

In conclusion it is submitted that no valid reason exists why this Court should overturn a line of State authorities strongly adhering to the constitutionality of these Penal Code sections under the Federal Constitution and in effect reverse itself in holding the involvement of a substantial Federal question. If said Penal Code sections at the time of the dismissal of the appeal in *Troche* v. *California*, *supra*, invaded no constitutional guarantee, they of course do not now.

It is urged that appellee's motion to dismiss the appeal be granted.

Dated September 29, 1941.

Respectfully submitted,

EARL WARREN,
Attorney General of the State of California,
By DAVID K. LENER,
Deputy Attorney General,
Attorney for Appellee.

APPENDIX.

Section 1016, Penal Code:

"There are five kinds of pleas to an indictment or information:

1. Guilty.
2. Not guilty.
3. A former judgment of conviction or acquittal of the offense charged.
4. Once in jeopardy.
5. Not guilty by reason of insanity.

A defendant who does not plead guilty may enter one or more of the other pleas. A defendant who does not plead not guilty by reason of insanity shall be conclusively presumed to have been sane at the time of the commission of the offense charged, provided that the court may for good cause shown allow a change of plea at any time before the commencement of the trial. A defendant who pleads not guilty by reason of insanity, without also pleading not guilty thereby admits the commission of the offense charged."

(*California Statutes 1927*, p. 1148)

Section 1020, Penal Code:

"All matters of fact tending to establish a defense other than one specified in the third, fourth, and fifth subdivisions of section 1016, may be given in evidence under the plea of not guilty."

(*California Statutes 1927*, p. 1149)

Section 1026, Penal Code:

"When a defendant pleads not guilty by reason of insanity, and also joins with it another plea or pleas, he shall first be tried as if he had entered such other plea or pleas only, and in such trial he shall be conclusively presumed to have been sane at the time the offense is alleged to have been committed. If the jury shall find the defendant guilty, or the defendant pleads only not guilty by reason of in-

sanity, then the question whether the defendant was sane or insane at the time the offense was committed shall be promptly tried, either before the same jury or before a new jury in the discretion of the court. In such trial the jury shall return a verdict either that the defendant was sane at the time the offense was committed or that he was insane at the time the offense was committed. If the verdict or finding be that the defendant was sane at the time the offense was committed, the court shall sentence the defendant as provided by law. If the verdict or finding be that the defendant was insane at the time the offense was committed, the court unless it shall appear to the court that the defendant has fully recovered his sanity shall direct that the defendant be confined in the state hospital for the criminal insane, or if there be no such state hospital, then that he be confined in some other state hospital for the insane. If, however, it shall appear to the court that the defendant has fully recovered his sanity such defendant shall be remanded to the custody of the sheriff until his sanity shall have been finally determined in the manner prescribed by law. A defendant committed to a state hospital shall not be released from confinement unless and until the court which committed him, or the superior court of the county in which he is confined, shall, after notice and hearing, find and determine that his sanity has been restored. In the event such hearing is held in the county in which the defendant is confined, notice as ordered by the court shall be given to the district attorney of said county and also to the district attorney of the county from which said defendant was committed. Nothing in this section contained shall prevent the transfer of such person from one state hospital to any other state hospital by proper authority nor the transfer of such patient to a hospital in another state in the manner provided by law, upon order of the superior court in the county from which he was committed, or in which he is detained."

(*California Statutes 1927*, page 1149)